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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,633	05/22/2000	William B. Johnson		1491

7590 12/26/2001  
James V Harmon  
1000 Northstar Center East  
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Minneapolis, MN 55402

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/26/2001

Please find below and/or attached an Office communication concerning this application or proceeding.



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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 11/7/01

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-16 is/are pending in the application.

Of the above, claim(s) 10-16 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 1616

Applicant's election without traverse of Group I in Paper No. 4 is acknowledged.

Claims 10-16 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. These claims are to toxic (to some species) compounds contradicting claim 1.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 already requires thickeners.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1, 3, 4, 7, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Black--  
5536452.

See col. 2, a dispersion in non-toxic alcohol, of a non-toxic non-ionic surfactant with EDTA, identifiable as a soluble thickener, also able to extend life (claim 9), absent any compound identification in applicant's claim. The composition is non toxic to humans. See example 1; viscous films can be obtained with the composition. No patentable weight is given to future intended use on insects.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishimura et al JP-  
54-49303.

Cellulose--sodium thickener, with non-ionic surfactant, camphor oil, a biocompatible preservative (antimicrobial) are shown--the instant composition, no patentable weight given to future intended use. However, it is clear that insecticidal efficacy is intended, while the composition is non-toxic to wood, and, clearly less toxic to all than the compared with kerosene.

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It is also clear that if one were to drop the insect in a pot of this composition or spray it all over the insect, the insect would be debilitated or killed.

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Dupis et al 6120780.

Here again is an example of the instant composition as claimed, non toxic to people, as useable, as aerosol (col. 5, line 48-line 18, col. 6) thick as desired, even in the mouth! Example 1 shows sodium lauryl sulphate surfactant with polymeric thickener and preservative (citric acid).

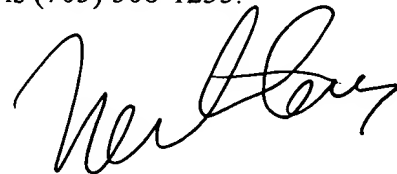
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

December 6, 2001



NEIL S. LEVY  
PRIMARY EXAMINER